

LABOUR DEPARTMENT

The 25th August, 1970

No. 7347-I Lab-70/23651.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Indian Hardware Industries, Ltd., N. I. T., Faridabad.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA,
FARIDABAD

Application No. 16/70 u/s. 33-C (2) of the I.D. Act, 1947.

between

THE WORKMEN SHRI V. BALAKRISHNAN AND THE MANAGEMENT OF M/S INDIAN
HARDWARE INDUSTRIES, LTD; N. I. T. FARIDABAD

Present :—Shri Onkar Parshad for the workmen.

Shri R. C. Sharma for the management.

ORDER

Shri V. Balakrishnan, Ex-employee of M/S Indian Hardware Industries Ltd. N. I. T., Faridabad, brought this application under section 33-c (2) of the Industrial Disputes Act, 1947 claiming a sum of Rs. 325/—on account of his security deposit of Rs. 275 plus Rs. 50 by way of interest thereon. Notice of the application was given in the management. It has been contended that the security deposit of the applicant was Rs. 269.10 only on which he is entitled to Rs. 10.37 as interest upto 6th of August, 1970, in all, Rs. 279.47. The contention has been accepted on behalf of the applicant. I, therefore, hold that Shri V. Balakrishnan, applicant is entitled to Rs. 279.47 on account of his security deposit and interest thereon. The application is decided accordingly No order as to cost.

O. P. SHARMA,

Presiding Officer, Labour Court,
Haryana, Faridabad.

Dated 7th August, 1970

Enlist. No. 197, Dated Faridabad, the 11th August, 1970

Forwarded (two copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under sub-section (4) of section 33-C of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer, Labour Court,
Haryana, Faridabad.

The 8th September, 1970

No. 7597-I Lab-70/25924.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Bags and Cartons, India, Daulta Bad Road, Gurgaon.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 7 of 1970

between

THE WORKMEN AND THE MANAGEMENT OF M/S BAGS & CARTONS, INDIA, DAULTABAD
ROAD, GURGAON

Present.—

Shri Sarda Nand, for the workmen.

Shri Chuni Lal, for the management.

AWARD

Sarvshri Ram Charan and Ram Raj were in the service of M/s Bags and Cartons, India, Daultabad Road, Gurgaon. Their services were terminated and this gave rise to an industrial dispute. Accordingly the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal for adjudication,— vide Government Gazette Notification No. ID/GG/748-69/1708, dated 22nd January, 1970.

Whether the termination of services of Sarvshri Ram Charan and Ram Raj was justified and in order. If not, to what relief are they entitled?

On receipt of the reference usual notices were issued to the parties. It is however not necessary to decide the case on merits because each of the workman has received Rs 100 from the management and have withdrawn their claim for reinstatement. The statements of their representatives have also been recorded in Court. In view of the settlement between the parties the workmen are not entitled to any further relief. I give my award accordingly.

No order as to cost.

Dated the 17th August, 1970

P. N. THUKRAL,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. T/7014, dated 17th August, 1970

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 17th August, 1970

P. N. THUKRAL,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 7595-1Lab-70/25926.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad, in respect of the dispute between the workmen and the management of M/s Ego Metal Works Gurgaon :—

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 40 of 1970

between

SHRI CHANDER PARKASH SETHI WORKMEN AND THE MANAGEMENT OF M/S
EGO METAL WORKS, GURGAON

Present :

Shri C. B. Kaushik for the workman.

Shri Ravinder Chawala for the management

AWARD

Shri Chander Parkash Sethi was in the service of M/s Ego Metal Works, Gurgaon. His services were terminated and this gave rise to an industrial dispute. Accordingly the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal for adjudication,—vide Government Gazette Notification No. ID/GG/19M-69/6074, dated 4th March, 1970.

Whether the action of the management in not providing work/terminating the services of Shri Chander Parkash Sethi, son of Shri Khub Chand is justified and in order. If not, to what relief is he entitled?

On receipt of the reference usual notices were issued to the parties in response to which a written statement was filed on behalf of the management. A number of preliminary objections were raised. It is however not necessary to decide the case on merits because a compromise has been arrived at between the parties. The management has paid a sum of Rs. 1,700/— to the workman in full and final settlement of all his claim. The workman has accepted this amount and now no dispute remains between the parties. The items of dispute referred for adjudication therefore does not require any decision. I give my award accordingly. No order as to cost.

P. N. THUKRAL,

Presiding Officer,
Industrial Tribunal, Haryana.
Faridabad.

Dated, 17th August, 1970.

No. T/70/3 dated : 17th August, 1973.

Forwarded (four copies) to the Secretary to Government, Haryang, Labour and Employment Departments. Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,

Presiding Officer,
Industrial Tribunal, Haryana.
Faridabad.

Dated: 17th August, 1970.

1st/8th September, 1970

No. 7596-1Lab-70/25928.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 Act, No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the presiding officer, Industrial Tribunal, Haryana Faridabad in respect of the dispute between the workmen and the management of M/s Haryana Crushing Company Village Nathupur District Gurgaon.

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 91 of 1969

Between

SHRI ASSA RAM, WORKMAN AND THE MANAGEMENT OF M/S HARYANA CRUSHING COMPANY VILLAGE NATHUPUR DISTRICT GURGAON

Present.—Shri C.B. Kaushik, for the workman.

Nemo, for the management.

AWARD

Shri Assa Ram was serving as a Truck Driver in M/s Haryana Crushing Company, Village Nathurpur, District Gurgaon. His services were terminated and this gave rise to an Industrial dispute. Accordingly the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal, for adjudication, vide Government Gazette Notification No. ID/GG/77-B-69/34951 dated the 29th December, 1969.

Whether the termination of services of Shri Assa Ram, s/o Sh. Bhulla Singh was justified and in order. If not, to what relief is he entitled?

On receipt of the reference usual notices were issued to the parties for 12th January, 1970 under registered over Acknowledgement Due. Personal service of the respondent company could not be effected. The registered notice was received back with the endorsement that address refused to receive the notice. Fresh notice was 27th February, 1969. No proceedings could take place on 27th February, 1970 because the Presiding Officer was on leave. Fresh notices were issued for 27th April, 1970 in the name of partners of the respondent company. Notice addressed to Shri Krishan Lal partner was received back with an endorsement that he had refused to except it while the notice addressed to Shri Ram Singh Partner was received back with an endorsement that the addressed was out of station. Notices were again issued for 12th June, 1970. The

situation did not improve because the notice issued to Shri Krishan Lal Partner was received back with and endorsement that he had refused to accept the service while the notice issued to Shri Ram Saran Partner was received back with an endorsement that he was avoiding to receive the notice. Under these circumstances no alternative was left but to record the evidence of the workman under the provisions of rule 22 of the Industrial Disputes (Punjab) Rules, 1958 and the case was adjourned to 10th August, 1970 to enable the workman to produce his evidence. In order to give a last chance the management to appear if they so desire, it was ordered that the Partner of the respondent company be informed of the date fixed. The notice issued to Shri Krishan Lal was received back with the same report that he had refused to accept the notices and Shri Ram Saran Partner also avoided to receive the notice because the endorsement of the postman concerned show that a number of attempts were made to effect service on him.

The evidence of Shri Assa Ram applicant workman was recorded. Shri Assa Ram stated on oath that he joined the service of the respondent concern as a Truck Driver on 16th December, 1966 at Rs. 240 P.M. and he remained in the service of the company upto 16th December, 1968 when his services were terminated without giving him any notice or charge sheet. He says that he simply asked for wages and over time allowance and he has also made an application for the recovery of his dues under the provisions of Section 33 (c) (2) of the Industrial Disputes Act. A copy of this application is Ex. W. W. 1/1. The workman also produced the original log books marked Ex. W. W. 1/2 and Ex. W. W. 1/3 which he maintained as a Driver. The evidence of the workman satisfactorily establishes that he was actually in the service of the respondent company and his service had been wrongfully terminated because he was given no opportunity to show cause as to why his services be not terminated. The workman has also stated that he has not been able to get any employment after he was turned out by the respondent company. He is therefore entitled to be reinstated with continuity of service and full back wages.

P. N. THUKRAL,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 17th August, 1970.

No. P/1/90 dated 17th August, 1970.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh. as required under section 15 of the Industrial Disputes Act, 1947.

P.N. THUKRAL,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 17th August, 1970.

No. 7598-ILab-70/25931.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer Industrial Tribunal, Haryana Faridabad in respect of the dispute between the workmen and the management of M/s Amrit Industries, Faridabad.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 56 of 1969.

between

The workmen and the management of M/s Amrit Industries, Faridabad.

Present:— Shri Amar Singh, for the Workman.

Shri D. C. Bhardwaj, for the management.

AWARD

An Industrial dispute arose between the workmen and the management of M/s Amrit Industries Faridabad and the same was referred to this Tribunal for adjudication,—*vide* Government Gazette Notification No. ID.FD 445-A/28151, dated 14th October, 1969. The items of dispute referred for adjudication are as under:—

(1) Whether the workmen of the factory are entitled for the enhanced rates of bonus for the year 1967-68. If so what details ?

(2) Whether the workmen of the factory should be supplied uniforms ? If so with what details and from which date ?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workmen and the management filed their written statement. The management pleaded that the respondent factory started the manufacturing process only in January, 1969 and has not yet made any profit. As regards uniforms it was pleaded that the management does not have the capacity to bear any further financial burden. The pleadings of the parties gave rise to the following issues:—

1. Whether the respondent concern started manufacturing process in January, 1969 ?

2. What profit or loss has been suffered by the respondent since its started production ?

3. Whether the workmen of the respondent factory are entitled to uniforms. If so, with what details and from which date ?

It is not necessary to decide the case on merits because a compromise have been arrived at between the parties. The management have agreed to pay Rs. 25/- per annum to each of the workmen who complete one year of service in the respondent factory as uniforms allowance. As regards the claim for bonus the representative of the workmen has stated that he does not press the claim for bonus in view of the fact that the respondent concern is not making any profit. The statements of the representatives of the parties have been recorded and in view of the statements of the parties I hold that the workmen are not entitled to any bonus and that the workman who complete one year of service in the respondent factory would get Rs. 25/- per annum as uniform allowance. I give my award accordingly. No order as to cost.

Dated 17th August, 1970.

P. N. THUKRAL,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. T/2-90 dated 17th August, 1970.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL.

Presiding Officer,
Industrial Tribunal Haryana
Faridabad.

Dated 17th August, 1970

No. 7594-ILab-70/25933.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad, in respect of the dispute between the workmen and the management of M/s Ego Metal Works Gurgaon.

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 75 of 1970

between

Shri Gian Chand, workman, and the management of M/s Ego Metal Works, Gurgaon.

Present—

Shri C. B. Kaushik, for the workman.

Shri D.C. Chadha, for the management.

AWARD

Shri Gian Chand was in the Service of M/s Ego Metal Works, (P) Ltd, Gurgaon. His services were terminated and this gave rise to an industrial dispute. Accordingly the Governor of Haryana in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal, for adjudication,—*vide* Government Notification No. ID/GG/225-70/9915, dated 6th April, 1970.

Whether the retrenchment of Sh. Gian Chand was justified and in order. If not, to what relief is he entitled?

On receipt of the reference usual notices were issued to the parties in response to which a written statement was filed on behalf of the management in which a number of objections have been raised. It is however not necessary to decide the case on merits because a compromise has been effected between the parties. The workman has received a sum of Rs. 500 and has given up his claim for reinstatement. The statement of the representative of the workman has been recorded. In accordance with the terms of compromise the workman is not entitled to any further relief. I give my award accordingly. No order as to cost.

Dated 17th August, 1970

P. N. THUKRAL,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. T/70/5

Dated: 17th August, 1970

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 17th August, 1970

P. N. THUKRAL,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 7303-1Lab-70/25936.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Faridabad in respect of the dispute between the workman and the management of M/s Escorts Ltd., I, Faridabad.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA
FARIDABAD

APPLICATION UNDER SECTION 33-C(2) OF THE I. D. ACT

Application No. 19/70

between

SHRI SHARWAN KUMAR, WORKMAN AND THE MANAGEMENT OF M/S. ESCORTS LTD. I,
FARIDABAD (HARYANA)

Present: Shri Sharwan Kumar, applicant and Shri Onkar Parshad, authorised representative.

Shri K. S. Jain, Personnel Officer for the management.

ORDER

Shri Sharwan Kumar an employee of M/s, Escorts Ltd. I, Plant No. 1, Faridabad (Haryana), brought this application under section 33-C(2) of the Industrial Disputes Act, 1947 claiming Rs 315 on account of his suspension allowance from 26th March, 1970 to 25th June, 1970 both days inclusive. Notice of the application was given to the management.

Both the parties have appeared to-day, it has been alleged on behalf of the management that a settlement has been arrived at between the parties and the applicant does not want to pursue this application. The applicant admits this fact. His statement has been recorded.

In view of the above, it is not necessary to go into the merits of the case. The application should be dismissed as withdrawn, and I order accordingly. No order as to cost.

Dated 13th August, 1970.

O. P. SHARMA,
PRESIDING OFFICER,
Labour Court, Haryana,
Faridabad.

No. 294, dated Faridabad, the 13th August, 1970.

Forwarded (two copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under sub-section (4) of section 33-C of the Industrial Disputes Act, 1947.

O. P. SHARMA,
PRESIDING OFFICER,
Labour Court, Haryana,
Faridabad.

The 4th September, 1970

No. 7830-1-Lab-70/26564.— In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Haryana Roadways, Haryana.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER. INDUSTRIAL TRIBUNAL.
HARYANA, FARIDABAD

Reference No. 1 of 1968

between

THE WORKMEN AND THE MANAGEMENT OF M/S HARYANA ROADWAYS, HARYANA

Present.

Shri J. D. Bakshi with Shri Jaswant Singh for the workmen.

Shri Sita Ram Budhi Raja and Shri K. C. Gupta for the management.

AWARD

The employees of Haryana Roadways an undertaking of the Haryana State Government raised a number of demands including demand for Bonus to which they were not even entitled under the Payment of Bonus Act. Two settlement were arrived at between the parties with regard to the claim of bonus,—*vide* clause (4) of the settlement, dated 8th June, 1967 the demand for bonus was settled as under :—

“That all the employees will be entitled to receive annual *ex gratia* payment in accordance with the principles and provisions of payment of Bonus Act, 1965, beginning from the accounting year, 1966-67 (ending 31st March, 1967),. The payment of minimum of 4 per cent shall be made before 30th June, 1967 and the balance, if due, shall be paid as early as possible immediately after the audit.”

Clause 13 of the Memorandum of settlement, dated 26th October, 1967 with regard to bonus was in the following terms :—

"It is agreed that the Department will submit a copy of the profit and loss accounts for the year, 1966-67 on the basis of the Payment of Bonus Act, 1965, with calculations about their admissibility of *ex gratia* to the Union by the 15th of November, 1967 and payment due, if any, will be made by the 26th of November, 1967. The Headquarters Clerical Staff of the Commercial Wing will also be entitled to the *ex gratia* payment for the year, 1966-67 and onwards, with the sanction of Government."

The management in compliance with the provisions of these settlements calculated the allocable surplus and while doing so, deducted the Income Tax and Road Tax which they would have been liable to pay had the Roadways been a company incorporated under the Company's Act. The financial year, 1966-67 was also calculated from 1st November, 1966 (i.e., the date from which the State of Haryana was created) to 31st March, 1967. The objection of the workmen is that since the management had not actually paid the Income Tax and the Road Tax, these taxes could not have been deducted from the gross profits and further the financial year is always counted from the 1st April to 31st of March, therefore the expression year, 1966-67 as used in clauses 11 and 13 of the settlements arrived at between the parties could only mean the period from 1st April, 1966 to 31st March, 1967. They further contended that the amount of depreciation, Reserve Fund Motor Transport, Reserve Fund and interest payable on capital were to be added back in accordance with section 4 of the Payment of Bonus Act.

The calculation of the allocable surplus as made by the management is given in Annexure 'A' to the order of reference. This was not accepted by the workmen. In order to resolve the dispute the President of India in exercise of the powers conferred by section 36(A) of the Industrial Disputes Act has referred the following matter for clarification :—

"Whether the figures of allocable surplus as given in Annexure 'A' prepared by the Haryana Roadways, Haryana for the period from 1st November, 1966 to 31st March, 1967 are calculated on the basis of Payment of Bonus Act, 1965? If not, what should be the correct figure of allocable surplus and with what details?"

On receipt of the reference usual notices were issued to the parties by my learned predecessor Shri K. I. Gosain in response to which the workmen filed their statement of claim and the management filed their written statement. There were certain clerical errors and type mistakes in Annexure 'A' as published in the Government Notification. The parties agreed that the correct chart as filed by the management was Ex. R-3. The parties also made a statement that they did not wish to produce any evidence in support of their respective contentions. My learned predecessor after hearing the parties gave his award, dated 20th January, 1968 which was published in the Haryana Government Gazette (Extraordinary) dated 6th February, 1968. It was observed that the main controversy between the parties was with regard to two items which the employer in this case seek to be allowed to them as prior charges, which are (1) Road Tax amounting to Rs 5,37,073.00 and (2) Income Tax amounting to Rs 11,57,424. My learned predecessor observed that the allowance or disallowances of these two items rests upon the interpretation of clause (4) of the agreement, dated 8th June, 1967 and held that by virtue of this clause the intention of the parties at the time of making the agreement was that the workman of this undertaking should be placed at par with the workmen of private transporters and that in the matter of payment of bonus, they should not be made to suffer simply because their employer happened to be the Government to which the Payment of Bonus Act was not in terms applicable and since a private transporter would have been liable to pay the Income Tax as also the Road Tax, therefore while calculating the allocable surplus, he would have been justified in claiming these amounts as prior charges, and the Government in this case was equally justified in doing the same. My learned predecessor accordingly interpreted clause 4 of the agreement, dated 8th June, 1967 as to mean that the Government was liable to make *ex gratia* payment of bonus which was to be calculated in accordance with the principles and provisions of the Payment of Bonus Act by placing the workmen of the Haryana Roadways at par with the workmen serving under private transporters and by placing the Government at par with private employees in the transport industry and since a private transporter would have been liable to pay Income Tax as also the Road Tax and in preparing a chart of allocable surplus he would have been justified in claiming these amounts as prior charges. the Government in this case was equally justified in doing so.

As regards the meaning to be given to the year, 1966-67 my learned predecessor held that properly construed the words "the year, 1966-67" can only mean the period commencing with 1st November, 1966 and ending with 31st March, 1967.

The workmen were not satisfied with the award of my learned predecessor and filed a Writ Petition in the High Court which was registered as Civil Writ No. 1437 of 1968 Hon'ble Mr. Justice Bal Raj Tuli while disposing of the Civil Writ quashed the award of my learned predecessor with regard to the interpretation of clause 4 of agreement dated 8th June, 1967 and was pleased to hold that the Haryana Roadways which was an undertaking of the State Government could not be equated with a private Transport Company and is not entitled to the deduction of national income tax determined according to the rates mentioned in the Finance Act applicable to the companies and that the allocable surplus had to be determined without the deduction of the income tax. With regards to the deduction on account of the road tax, the Hon'ble Judge was pleased to hold that the road tax was liable to be

deducted out of the profits of the Haryana Roadways in order to determine the allocable surplus for the purpose of determining the *ex-gratia* payment due to the workmen. As regards the meaning of "the year 1966-67 mentioned in clause 13 of the agreement dated October 26, 1967," the Hon'ble Judge was pleased to conform the award of my learned predecessor.

While remanding the case for re-decision in the light of the observations made by him, the Hon'ble Judge was also pleased to observe that since the parties did not argue about the other items to be added back, it would be open to the parties to urge these points before the Industrial Tribunal in order to enable him to arrive at a correct determination of the allocable surplus to be shared by the workmen in terms of clause 13 of the agreement, dated October 16, 1967.

The management filed a Letters Patent Appeal against the Judgement of Justice Tuli which was also rejected on 28th May, 1970. The parties appeared before this Tribunal on 5th June, 1970. Shri K.C. Gupta who was appearing on behalf of the management filed an affidavit of Shri Sita Ram Budhi Raja, Joint Provincial Transport Controller, Haryana wherein it was affirmed that the copy of the Judgement of the Division Bench of the High Court was not yet available to the Government but the whole matter had been discussed with the Advocate General Haryana and it has been decided to take requisite steps for moving the Supreme Court of India into the matter. It was therefore prayed that further proceedings be stayed to enable the department to take the necessary steps for filing an appeal to the Supreme Court. This request was vehemently opposed on behalf of the workmen. It was pleaded that the department had been intentionally delaying the payment of bonus for the last four years and no further adjournment should be given. However in view of the fact that the Letters Patent Appeal had been decided only on 28th May, 1970, it was held that the request for adjournment was reasonable because the Government could not be expected to obtain the copy of the Judgement in such a short time and prepare the case for arguments. The request for the stay of the proceedings was not accepted. It was observed that in case their Lordships of the Supreme Court are pleased to admit the appeal further proceedings or the implementation of the award could be stayed if directed. The case was, therefore, adjourned to 22nd June, 1970 for arguments.

On the date fixed Shri Sita Ram Budhi Raja, Joint Provincial Transport Controller assisted by Shri K.C. Gupta and by Shri V.N. Bhatia, Accounts Officer appeared and again made a request for adjournment. It was pleaded that in case the proceedings are not stayed and an award was made allowing *ex gratia* payment of bonus in the light of the observations made by the High Court, the workmen would start having high hopes about the bonus that they would get and if later on the award is quashed, a highly explosive situation would develop as there would be an anti-climax, because the hopes of the employees would be dashed to the ground. In my opinion there is no substance in this fear. The High Court has already quashed the award of my learned predecessor and has been pleased to remand the case for redicision in the light of observations made by the High Court. This judgement has raised the hopes of the workers and if the proposed appeal of the Government is accepted by the Supreme Court the workmen would be disappointed and if an explosive situation arises on this ground no body can prevent it. The prayer for adjournment was not therefore accepted,—*vide* the orders of this Tribunal, dated 22nd June, 1970 it was also held that it was not possible to accept the prayer for further adjournment at this stage because Shri Gupta on the previous hearing had made an oral prayer for the stay of the proceedings which had not been accepted and in case the management wanted this order to be reviewed an application in proper time should have been made.

Shri Budhi Raja then raised an objection that Shri Jaswant Singh was no longer the President of the Haryana Roadways Workers Union and had no authority to appear on behalf of the workmen or to authorise anybody else to appear on their behalf. It was alleged that Shri Amar Singh Fauji was the President of the Haryana Roadways Workers Union and therefore from the point of view of the management no authorised representative of the workmen was present. Shri J.D. Bakshi who was appearing on behalf of the workmen submitted that a similar objection had been raised in the High Court by the management that Shri Jaswant Singh was no longer the President of the Haryana Roadways Workers Union but this objection was not accepted and it was therefore not open to the management to raise this objection again. Shri Jaswant Singh also filed an affidavit that Haryana Roadways Workers Union is a registered union under the Indian Trade Union Act, 1926 and under the provisions of the Constitution of the Union the election of the office bearers of the union is held only once in two years and the last election was held only on 27th October, 1968 and no further election was due till October, 1970 and so the question of Shri Amar Singh Fauji being elected as a President of the Haryana Roadways Workers Union did not arise. Shri Budhi Raja was ordered to file an affidavit in support of his submissions and that Shri Jaswant Singh was not President of the Union but this has not been done.

Shri Budhi Raja did not formally argue the case on the ground that argument on behalf of the management of the Haryana Roadways could be advanced only by the Officer of the Law Department.

It is unfortunate that no officer of the Law Department could be deputed to argue the case on the date fixed although the request for stay of proceedings had been specifically rejected on the previous hearing. If the date 22nd June, 1970, which was fixed for arguments was not suitable to the officer concerned, a request for adjournment on this ground and for fixing a suitable date for arguments could have been made in proper time but this was done. Further no prejudice would be caused to the management if the case is not adjourned for formal arguments because after the acceptance of the Writ Petition there is now no point left for arguments. The High Court has directed that National income tax is not to be deducted and that the road tax is to be deducted. As regards the amount of depreciation, Reserve Fund, Motor Transport Reserve Fund and Interest payable on capital which according to the

workmen was to be added back in accordance with the provisions of section 4 of the Payment of Bonus Act, the High Court has left this point to be decided by this Tribunal but the workmen have made a written application in which it is stated that they do not press this claim for the time being because even if the calculations of the management are accepted, the item of income tax alone is sufficient to give them the bonus of 20%. In view of this application no further point remains to be decided and it must be held that the workmen are entitled to *ex-gratia* payment of bonus at the rate of 16% in addition to the 4% which have already been paid to them for the year 1966-67 which is to be counted from 1st November, 1966 to 31st March, 1967.

Shri Budhiraja raised another point. He submitted that under the Payment of Bonus Act, Industrial Establishments which are liable to pay bonus to their employees are divided into various categories and the management made the calculations on the assumption as if the Haryana Roadways was incorporated under the Company's Act and carrying on Transport business because the management was under the impression that the spirit of the settlement dated 8th June, 1967 was that the employees of the Haryana Roadways who were not entitled to bonus as of right under the Payment of Bonus Act being the employees of a public undertakings should not suffer and they should be placed at par with the employees of private transport companies but in view of the judgement of the High Court that the Haryana Roadways can not be treated as if it is a private company carrying on transport business, a question arises under which category Haryana Roadways should now be treated for the purpose of calculating the bonus due to the workmen. In my opinion there can possibly be no solution to this difficulty because the Payment of Bonus Act in terms does not possibly apply to Government undertakings and therefore the Act cannot give any guidance as to the category under which the Government undertakings should pay bonus to their employees. The question as to whether in view of this difficulty the agreement arrived at with the workmen that the allocable surplus is to be calculated in accordance with the provisions of the Payment of Bonus Act is at all legal should have been raised by the management before the High Court and since it has not been done, I am doubtful if such an objection can be now raised in this Tribunal specifically after the remand of the case by the High Court with a specific direction that the case should now be decided in the light of the observations made by the High Court.

Shri Bakshi on behalf of the workmen has rightly submitted that it is now too late for the management to raise this objection because it is now not open to this Tribunal to go into this question. It has been rightly submitted that the case has been remanded to this Tribunal by the High Court with a direction to give the award in the light of the observations made in the judgement of the High Court and now no new point can be taken up by the management.

As already pointed out above according to the directions of the High Court the road tax is to be deducted and the income tax is not to be deducted. The workmen have given up their claim for adding back the Depreciation Reserve Fund, Motor Transport Reserve Fund and interest payable on the reserve fund and even if their items are not added back, the workmen are entitled to *ex-gratia* payment of bonus at the rate of 16% in addition to the 4% which has already been paid to them. I give my award accordingly. No order as to cost.

P.N. THUKRAL,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 26th August, 1970.

No. 1263, dated the 31st August, 1970

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 26th August, 1970.

P.N. THUKRAL,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 7836 1-Lab-70/26566.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Dabwali Transport Co., Dabwali, District Hissar:—

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 27 of 1970

between

SHRI TILAK RAJ WORKMAN AND THE MANAGEMENT OF M/S DABWALI TRANSPORT CO.,
DABWALI, DISTRICT HISSAR

Present: Shri Rachpal Singh, for the workman.
Shri D.C. Bhardwaj, for the management.

AWARD

Shri Tilak Raj was in the service of M/s Dabwali Transport Co., Dabwali, District Hissar. His services were terminated and this gave rise to an industrial dispute. Accordingly the Governor of Haryana, in exercise of the power conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal for adjudication, vide Government Gazette Notification No. 1D 4143, dated 13th February, 1970.

Whether the termination of services of Shri Tilak Raj, son of Shri Badh Raj, Conductor is justified and in order? If not, to what relief is he entitled?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workman and the management filed their written statement but no body appeared on behalf of the management on the date fixed of framing of the issues. The workman in his statement of claim had alleged that he had a clean and unblemished record of service as a Checker during the last 15 years but on 23rd May, 1969 he was charge-sheeted on baseless grounds. It was stated that an enquiry was held against him by Shri Gurnail Singh, General Manager of the Company and the Enquiry Officer submitted his findings on 12th June, 1969 in which he reported that no charge was proved against the workman and he should be reinstated forthwith but in spite of the fact that he had been exonerated by the Inquiry Officer, the management dismissed him from service on 20th June, 1969. It is further stated that he served a notice on the management that he would fast unto death because the staff had not been paid their salary and bonus for the last 3 or 4 months. The workman further stated that he was an active Trade Union Worker and used to collect monthly subscriptions from the members Employees and because of his Trade Union Activities and because of his threat that he would go on fast unto death, the management started harrasing him in many ways and ultimately dismissed him from service although the Enquiry Officer had reported that his guilt was not established.

In view of the allegations made in the claim statement it was considered necessary that the management should be given an opportunity to file their rejoinder. Although no body was present on behalf of the management it was ordered that the copy of the claim statement be sent to the management under Registered Cover and the case should come up at Faridabad on 21st May, 1970. On the date fixed Shri D.C. Bhardwaj appeared on behalf of the management and the following issues arose from the pleadings of the parties were framed:

1. Whether the reference can be said to be bad because the Conciliation Officer had not thoroughly investigated the case?
2. Whether the termination of services of Shri Tilak Raj, son of Shri Badh Raj, Conductor is justified and in order? If not, to what relief is he entitled?

The case was adjourned to 9th June, 1970 for the evidence of the parties. On the date fixed Shri Bhardwaj did not produce any evidence and requested for a date. He did not give any reason for the non-production of the evidence. He simply stated that the management had been informed of the date fixed but no reply has been received. Under these circumstances it was held that there was no adequate reasons for the non-production of the evidence by the management, and the evidence of the workman was recorded.

After the evidence of the workman had been recorded but before the award could be written, an application was made on behalf of the management praying that the ex-parte proceedings taken against the management be set aside and an opportunity be given to the management to produce their evidence. It was stated in the application that although the representative of the management as present at Rohtak on the date fixed, the witnesses from Dabwali could not reach Rohtak due to unavoidable circumstances. What these unavoidable circumstances were have however not been mentioned. It is further stated in the application that the Managing Director of the respondent Company had assured that the evidence would be produced on the next date of hearing. It was not possible to accept this application and re-open the case because the application did not even disclose what were the unavoidable circumstances on account of which the evidence could not be produced. The application for setting aside the ex-parte proceeding was accordingly rejected.

As regard the merits of the case my findings are as under:—

Issue No. 1.—The learned representative of the management did not cite any authority in order to show that a reference can not be made unless there is some evidence to show that the Conciliation Officer has thoroughly investigated the case. In order make a valid reference all that is necessary is that there should be in existence an industrial dispute or an industrial dispute should be apprehended and the appropriate Government considers it expedient to make the reference. The existence of the industrial dispute in the present case is apparent because according to the allegations of the workman in his services had been wrongfully terminated because of his Trade Union Activities, and the management deny this fact and the Government has in its discretion made the reference. Accordingly find this issue in favour of the management.

Issue No. 2.—The workman has appeared as a witness in support of his case and has stated on oath that he had been in the service of the respondent Company during the last 16 or 17 years and had a unblemished and a

clean record of service. He stated that in the year 1969 he was served with a charge sheet and the enquiry was held by the General Manager but no witness appeared on behalf of the management and the Enquiry Officer held him innocent. He had made a request that copies of the statement of the witnesses and the report of the Enquiry Officer be given to him but this request was not accepted.

The workman further stated that he was a member of the District Transport Workers Union during his 16 or 17 years of service and the management used to pay wages to their workmen after an interval of 6 to 8 months and therefore they had to serve a notice to the management and a pamphlet copy Ex. W.W. 1/1 was also published. The workman says that the Labour Officer telegraphically asked him not to resort to hunger strike and the confirmation of this telegram is marked Ex. W.W. 1/2.

As already pointed out above the management have led no evidence in support of their case. The representative of the management simply cross-examined the workman and put it to him that there was an over-writing on the passenger tickets issued by him but the workman denied this allegation. He stated that he did not remember any thing about the complaint dated 20th October, 1967 and marked Ex. M-5. The cross-examination done by the representative of the management is of no help to the management because even the record of the domestic enquiry held against the workman which has been filed by the management does not show that the Enquiry Officer held the workman to be guilty. Under these circumstances there is no other alternative but to hold that the termination of the services of Shri Tilak Raj was not justified and in order and he is entitled to be reinstated with continuity of service and full back wages. I give my award accordingly.

Dated 17th August, 1970.

P. N. THUKRAL,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1262, dated 31st August, 1970.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 17th August, 1970.

P. N. THUKRAL,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

B. L. AHUJA,
Commissioner for Labour and Employment.